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OFFICE OF PETITIONS

In re Application of :
Tautuhi et al. : DECISION ON PETITION
Application No. 10/806,335 :
Filed: March 23, 2004 :
Attorney Docket No. 1519-045 :
:

This is a decision on the petition filed August 5, 2004, requesting that the above-identified application be accorded a filing date of March 23, 2004.

On March 23, 2004, applicants deposited the above-identified application. However, on June 7, 2004, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Application" requiring drawings of applicants' invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that the specification filed on March 23, 2004, describes drawings containing Figures 1a, 1b, 1c, 1d, 2a, and 2b, but no drawings were received by the USPTO on March 23, 2004.

On August 5, 2004, in response to the Notice, applicants filed a 2 sheets of drawings (Figures 1a, 1b, 1c, 1d, 2a, and 2b). Additionally, applicants alleged that the drawings were believed to be deposited with the USPTO at the time of filing. In support of the allegation, applicants submitted a Declaration by Benjamin J. Hauptman.

Mr. Hauptman's Declaration stated his usual practice of personally reviewing the entire package of documents actually filed with the USPTO, after assembly by one of his filing assistants. He further stated that he only signs the filing package if the included drawings matched the "Brief Description of the Drawings" section. Mr. Hauptman asserted that he personally reviewed and signed the package for the above-identified application filed in the USPTO. Based on his recollections the drawings were included in the package; otherwise, he would not have signed the application transmittal.

The argument has been considered but is not persuasive. The Office file is the official record of the papers originally filed in this application. A review of the official file reveals no drawings are present in the file. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The recollections of Mr. Hauptman, which applicants rely on to support applicants' allegation that the drawings were submitted on filing the application is not sufficient evidence that those papers were actually filed in the Office.

The Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers that are being filed serves as prima facie evidence of receipt in the Office of all the items listed thereon on the date-stamped thereon by the Office. See MPEP 503. Unfortunately, applicants did not submit a date-stamped postcard receipt with the present petition.

In the alternative, applicants argued that drawings were not necessary for a filing date, because no drawing is required under 35 U.S.C. 113, first sentence for the understanding of the subject matter sought to be patented. Applicants requested that the application be considered complete and accorded a filing date of March 23, 2004.

The question of whether drawings are necessary under the first sentence of 35 U.S.C. 113 has been presented to the Supervisory Patent Examiner ("SPE") for Group Art Unit 1723, the Group Art Unit responsible for examining the subject matter claimed in this application. The SPE has stated that drawings are not required for an understanding of the invention disclosed in the above-identified application.

The application will be accorded a filing date of March 24, 2004, without any drawings because drawings were not necessary to obtain a filing date in this instance. Accordingly, the petition is **granted**.

Applicants are advised that Figures 1a, 1b, 1c, 1d, 2a, and 2b submitted on petition **will not** be entered into the record at this time and **are not** part of the original disclosure of this application.

In view of the above, the requirement for drawings as set forth in the "Notice of Incomplete Application" of June 7, 2004, is hereby withdrawn.

The Office of Initial Patent Examination is directed to accord the above-identified application a filing date of March 23, 2004, with "0" drawings, and to mail a corrected filing receipt.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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